

### **Provisional Election With Traverse**

The Examiner has required restriction of the claimed subject matter into one of five different groups.

In order to be fully responsive, Applicants hereby provisionally elect, with traverse, the subject matter of Group II. (Additionally, in order to expedite examination of the present application, Applicants herewith submit an amendment adding new claims 24-75 particularly related to Gene No. 17 and also drawn to the subject matter encompassed by Group II.) Applicants reserve the right to file one or more divisional applications directed to non-elected subject matter should the restriction requirement be made final. In such case, Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Applicants respectfully traverse and request the withdrawal of the Restriction Requirement. Applicants note that the MPEP indicates, "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." MPEP § 803. Assuming *arguendo*, that the groups listed by the Examiner represent distinct or independent inventions, restriction remains improper unless it can be shown that the search and examination of each group would entail a "serious burden." M.P.E.P. § 803. In the present situation, no such showing has been made. Moreover, Applicants submit that a search of the nucleic acid sequences of Group I would provide useful information for the polypeptide sequences of Group II, which in turn, would provide useful information for the antibodies of Group III. Furthermore, the above said information would also provide useful information pertinent to examination of the claims encompassed by Groups IV and V. Hence, Applicants respectfully submit that a search encompassing the subject matter of Groups I-V would not impose a serious burden. Accordingly, Applicants respectfully request the restriction requirement be withdrawn.

### Remarks

With the present amendment, claims 2-10, 12, 14-16, and 20- 23 have been canceled without prejudice or disclaimer. Claims 24-75 (encompassing Gene No. 17 polypeptides) have been added to assist in expediting prosecution of the present application and to expand the embodiments of the elected subject matter. Hence, claims 1, 11, 13, 17-19, and 24-75 are currently pending in the present application.

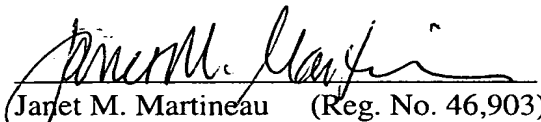
Support for new claims 24-75 can be found in the application and claims as originally filed. In particular, support for new claims 24-75 can be found, for example, in the specification at: page 58, second from last row of Table 1 and at pages 62-65 (e.g. HPMBQ91 ATCC Deposit, HPMBQ91 amino acids 1-121, HPMBQ91 amino acids 19-121); pages 65-66 (secreted portion); pages 67-72 (90% and 95% identity); page 76, lines 16-17 (30 and 50 contiguous amino acids); page 117, line 8 to page 119, line 16 (pharmaceutical compositions); pages 124-125 (heterologous proteins); pages 128, lines 1-5 (minus methionine); and, pages 271-279 (polypeptide production).

### *Conclusion*

Applicants respectfully request that the above-made amendments and remarks be entered and made of record in the file history of the instant application. If there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136 that is not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

Date: February 15, 2002

  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of: Ruben, et al.

Attorney Docket No.: PZ003P4

Application Serial No.: 09/852,659

Art Unit: 1632

Filed: May 11, 2001

Examiner: Pappu, Sita S.

Title: 28 Human Secreted Proteins



**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

Strike-through (~~strike-through~~) indicates text deleted.

**In the Claims:**

**Please amend claim 17 as follows:**

17. A method for preventing, treating, or ameliorating a medical condition, comprising administering to a mammalian subject a therapeutically effective amount of the polypeptide of claim 11 ~~or the polynucleotide of claim 1.~~

**New claims 24-75 have been added.**